an attempt to make a posthumous disposition of property, not witnessed, and therefore ineffectual to relieve the church of payment of the note. A gift must vest at once. *Love* v. *Francis,* 63 Mich. 181, 29 N. W. 843, 6 Am. St. Rep. 290; and pass beyond the control of the donor. *Hafer* v .*McKelvey,* 23 Pa. Super. Ct. 202. A gift cannot be made to take effect in the future. *In re Soulards Estate,* 141 Mo. 642, 43 S. W. 617. The cases have established that an instrument in any form, if the obvious purpose is not to take effect until after the death of the maker of the instrument, can operate as a will only. *Habergham* v. *Vincent,* 2 Ves. Jr. 204, 231; *Cover* v. *Stem,* 67 Md. 449, 10 Atl. 231, 1 Am. St. Rep. 406. For the distinction between wills and notes or other instruments, see ROOD, WILLS, § 73-75 and cases cited; full notes are given in 92 Am. Dec. 383-389 and in 89 Am. St. Rep. 486-500. The true test is whether the promisee acquires rights in praesenti or is to acquire them only in future, upon the promisee's death. If the latter, they can be conferred only by will. *Sullivan* v. *Sullivan,* 161 N. Y. 554, 56 N. E. 116; *Babb* v. *Harrison,* 9 Rich. Eq. (S. C.) 111, 70 Am. Dec. 203; *Robinson* v. *Schly,* 6 Ga. 515; *In re Diez,* 50 N. Y. 88, 93; JARMAN, WILLS, 22-23. In *Fiscus* v. *Wilson,* 74 Neb. 444, 104 N. W. 856, a mortgage was to become void upon the mortgagee's death, and the money, secured thereby, provided the interest was kept paid up, was to remain to the mortgagor. *Held,* not an attempted testamentary disposition. It did not appear, however, that the mortgagee could have demanded payment during her lifetime, unless the interest was not paid. A memorandum upon a note that it was to become null and void upon the payee's death, has been held void as an attempted testamentary disposition, not executed, as required by the statute, and therefore ineffective. *Dimon* v. *Keery,* supra; or, again, testamentary and entitled to probate. *Hunt* v. *Hunt,* 4 N. H. 434. See also *Sherman* v. *New Bedford Bank,* 138 Mass. 581.

CONTRACTS—CONSIDERATION—FORBEARANCE TO SUE.—Plaintiff was legatee under a will by which the estate was devised to B. and another in trust. Plaintiff was about to take legal proceedings to compel payment of her legacy. B. promised to pay plaintiff the difference between what the trustees were willing to pay her and the full amount of her legacy if she would not sue. *Held,* forbearance to compel the payment of the legacy is sufficient consideration to support the promise of B. *In re Pray's Estate; Thayer* v. *Pray's Estate* (1910), — Minn. —, 127 N. W. 392.

Consideration is necessary to the validity of every simple contract and consists of some benefit to the promisor or some detriment to the promisee. ANSON, CONTRACTS, pp. 41, 69. In a case where an agreement had been made between the principal beneficiary under a will, and the heirs of the testator, by which the beneficiary agreed that if the heirs would not contest the will and would sign an admission of service of the citation, he would pay each of them two hundred dollars, it was held that it was a sufficient consideration, and the promise was binding upon him. *Palmer* v. *North,* 35 Barb. 282; *Clark* v. *Lyons,* 77 N. Y. Supp. 697, 38 Misc. Rep. 516; *Grochowski* v. *Grochowski,* (Neb.) 109 N. W. 742. But the promisee must have good and

reasonable grounds for making the claim which he releases and must intend honestly and in good faith to oppose the establishment of the will, as "The compromise of a doubtful right is a sufficient consideration for a promise, and it does not matter on whose side the right ultimately turns out to be." *Bellows* v. *Sowles,* 55 Vt. 391, 45 Am. Rep. 621. If, however, the proof wholly fails to show that any ground of contest existed the forbearance to sue will not support the promise. *Sheppey* v. *Stevens,* 177 Fed. 484. It is not absolutely necessary in such cases that the promisee be an heir: thus where X had rendered certain services for a testator, relying on the testator's promise to bequeath X a certain sum if the services were rendered (which promise was not performed by the testator), and the sole beneficiary under the will had subsequently promised X to pay the amount promised by the testator if X would not contest the will, it was held that X's forbearing to contest the will was a sufficient consideration for the beneficiary's promise to X. *Lawrence* v. *Cammeyer,* 89 N. Y. Supp. 220, 96 App. Div. 633.

CONTRACTS—ILLEGAL CONTRACT—AGENT'S LIABILITY FOR PROCEEDS.—Plaintiff entered into a contract with defendant whereby defendant, as the agent of plaintiff, was to purchase property from different parties for plaintiff. The defendant was to act under the instructions of plaintiff in receiving money from the plaintiff and in paying it to the vendors of the property. Part of the agreement was that defendant was to write such letters to plaintiff as would enable plaintiff to mislead his customers, and thereby make more profitable re-sales of the property. The defendant, instead of buying from others for the plaintiff, was selling his own property to plaintiff at prices much above its value. In an action for an accounting the defense was based on the ground that plaintiff was guilty of an attempt to defraud his customers and therefore could not maintain this suit. *Held,* that plaintiff's right to an accounting is not based upon the illegal contract, but upon his ownership of the funds resulting from its performance. *Primeau* v *Granfield* (1910), — C. C., S. D., N. Y. —, 180 Fed. 847.

The principle of law is well settled that there can be no recovery on a contract when it is so connected with an illegal act that it is necessary to prove such act to maintain the suit. *Gunter* v. *Leckey,* 30 Ala. 591; *Phalen* v. *Clark,* 19 Conn. 421. But when the plaintiff, in an action on a contract which is assailed as illegal, can establish his case without the aid of the alleged illegal transaction, the illegality does not affect his right to recover, and it is under this latter class the principal case falls. *Yarborough* v. *Avant,* 66 Ala. 526; *Johnston* v. *Smith,* 70 Ala. 108. A number of courts, however, refuse to allow a principal or partner to recover in an undertaking which was illegal, on the ground that to do so would be to recognize, if not to enforce, illegal agreements. *Goodrich* v. *Tenney,* 144 Ill. 422, 33 N. E. 44, 19 L. R. A. 371. By permitting a principal to recover from an agent on an illegal contract, a situation could arise in which the principal could continue an unlawful business beyond the reach of the law, by living in another country and appointing agents in this country and compelling them to account for the money they receive. *Mexican International Banking Co.* v. *Lichtenstein,*